

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Frank Staples

v.

Civil No. 14-cv-473-JL

Richard M. Gerry, Warden, New Hampshire
State Prison; William Wrenn, Commissioner,
New Hampshire Department of Corrections;
New Hampshire Parole Board; and James Daly,
Chaplain, New Hampshire State Prison

REPORT AND RECOMMENDATION

Before the court are Plaintiff's motions to find defendants in default (doc. no. 44 and 56); and Plaintiff's "Motion to Cause a Federal Investigation" (doc. no. 57).

Discussion

I. Default Motions (doc. nos. 44 and 56)

During a hearing held on February 18, 2015, in which defendants were represented by counsel and the pro se plaintiff participated by telephone, plaintiff acknowledged that his twin motions, seeking to find that defendants had "default[ed]" with respect to a February 2, 2015, briefing deadline (doc. nos. 44 and 56), were based on his mistaken understanding that defendants had been ordered to file a brief by February 2, 2015. In fact, the court had simply granted defendants leave to file a brief by that date, without requiring them to do so. The

undersigned magistrate judge clarified that issue in the February 18, 2015, hearing, and plaintiff voiced no objection to the court's decision that those motions should be denied. Accordingly, the district judge should deny both of plaintiffs' "default" motions (doc. nos. 44 and 56), in light of statements made on the record in the February 18, 2015, hearing.

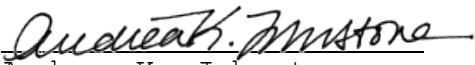
II. Motion to Cause Federal Investigation (doc. no. 57)

In Document No. 57, plaintiff moves the court to investigate whether filings that he placed in the prison mail system on or about January 26, 2015, were in fact filed. In a February 19, 2015, evidentiary hearing, plaintiff agreed on the record that certain filings docketed by the court clerk on January 29, 2015, and January 30, 2015, e.g., Doc. Nos. 37, 38, and 41, likely included the outgoing mail at issue. Accordingly, the district judge should deny that motion (doc. no. 57) as moot.

Conclusion

For reasons stated above, the district judge should deny plaintiff's "default" motions (doc. nos. 44 and 56), and plaintiff's motion to investigate his January 2015 court filings (doc. no. 57). Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice.

See Fed. R. Civ. P. 72(b)(2). Failure to file objections within the specified time waives the right to appeal the district court's order. See United States v. De Jesús-Viera, 655 F.3d 52, 57 (1st Cir. 2011); Sch. Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 564 (1st Cir. 2010).


Andrea K. Johnstone
United States Magistrate Judge

April 13, 2015

cc: Frank Staples, pro se
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Nancy J. Smith, Esq.